

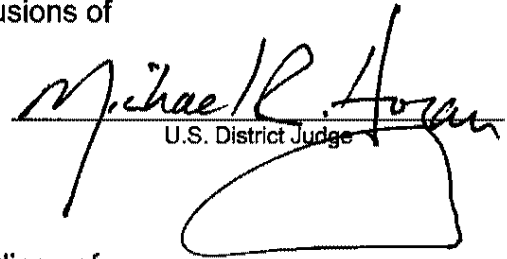
**FILED**

November 03, 2011

Clerk, U.S. Bankruptcy Court

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Bankruptcy Court's Findings of Fact and Conclusions of Law are hereby approved.

  
U.S. District Judge

Below are the Bankruptcy Court's Proposed Findings of Fact and Conclusions of Law which are recommended for approval.

  
FRANK R. ALLEY  
U.S. Bankruptcy Judge

## UNITED STATES BANKRUPTCY COURT

## FOR THE DISTRICT OF OREGON

11-6346-HO

In re:

Minerva B. Miller;

Case No. 10-63800-fra7

Debtor(s).

Adv. Pro. No. 11-06058-fra

Washington Federal Savings and Loan Association,

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

Plaintiff,

v.

Minerva B. Miller; Stephen P. Arnot, Trustee of the Bankruptcy Estate of Minerva B. Miller; Northwest Trustee Services, Inc., a Washington corporation; JP Morgan Chase Bank, National Association; Gene T. Flory, Trustee of the Jacqueline M. Flory and Gene T. Flory Living Trust; Joseph L. Perrino; Amber M. Perrino; First Tennessee Bank National Association; Vera Silva; Response Mortgage Services, Inc. a Washington corporation; RBS Citizens, National Association; Alan Lee Lynn; Andre B. Feliciano; Elaina T. Feliciano; Alysha Ann Jones; Mortgage Electronic Registration

1 Systems, Inc., a Delaware corporation;  
2 GMAC Mortgage, LLC, a Delaware Limited  
3 Liability Company, successor by merger to  
4 GMAC Mortgage Corporation; EverHome  
5 Mortgage Company, a Florida corporation;  
6 HSBC Mortgage Corporation (USA), a  
7 Delaware corporation; and PremierWest  
8 Bank, an Oregon Chartered Commercial  
9 Bank,

10 Defendants.

11 It appearing that orders of default have been entered against Defendants Minerva B.  
12 Miller, Gene T. Flory, Joseph L. Perrino, Amber M. Perrino, Vera Silva, Response Mortgage  
13 Services, Inc., Alan Lee Lynn, Andre B. Feliciano, Elaina T. Feliciano, Alysha Ann Jones, First  
14 Tennessee Bank National Association, GMAC Mortgage, LLC and PremierWest Bank, and the  
15 remaining parties having stipulated to these findings of fact, conclusions of law, and  
16 recommendation to the District Court; the court makes the following findings of fact and  
17 conclusions of law and recommends entry of final judgment in the form attached hereto as  
18 Exhibit 1.

19 Findings of fact:

20 1. On or about April 23, 1996, the Debtor Minerva Miller and Debtor's late husband  
21 granted Washington Federal Savings and Loan Association ("WFS") a trust deed on "Lot 6 of  
22 the Victoria Court Subdivision, Shady Cove, Oregon, according to the official plat thereof, now  
23 of record," and such trust deed was recorded in the Jackson County, Oregon real property  
24 records, Instrument Number 96-15241 on May 10, 1996 ("WFS Trust Deed"). That trust deed  
25 was given to secure a promissory note of even date in the original principal amount of  
26 \$204,000.00. WFS is the owner and holder of that note and of the beneficial interest in the WFS  
Trust Deed.

1           2.     On or about January 25, 2000, the Debtor and Debtor's late husband granted  
2 Washington Mutual Bank two trust deeds one each on Lot 2 and Lot 5 of the Victoria Court  
3 Subdivision, Shady Cove, Jackson County, Oregon, and such trust deeds were recorded in the  
4 Jackson County, Oregon real property records, Instrument Numbers 00-03481 and 00-03482 (the  
5 "JP Trust Deeds") on January 28, 2000. Those trust deeds were given to secure promissory notes  
6 of even date in the original principal amounts of \$188,000.00 each.

7           3.     JP Morgan Chase Bank, N.A., as acquirer of certain assets and liabilities of  
8 Washington Mutual Bank from the Federal Deposit Insurance Corporation as Receiver for  
9 Washington Mutual Bank, named herein as JPMorgan Chase Bank National Association  
10 ("JPMorgan") is the holder of those notes and the successor beneficiary of the JP Trust Deeds.  
11

12           4.     On December 29, 2004, after approval by the Oregon Real Estate Agency, a  
13 Declaration of Condominium Ownership for Victoria Court Condominiums (the "Declaration"<sup>1</sup>)  
14 was recorded in the official records of Jackson County, Oregon, as Instrument Number 2004-  
15 075174, by Dion H. Miller, Minerva B. Miller, Alan L. Lynn, Andre B. Feliciano and Elaina T.  
16 Feliciano as Declarants.

17           5.     Thereafter, the real property formerly known as Lots 1, 2, 4, 5, and 6 of Victoria  
18 Court Subdivision became subject to the condominium form of ownership and became known as  
19 the Victoria Court Condominiums ("Condominium").  
20

21           6.     The portions of Lots 1, 2, 4, 5, and 6 of Victoria Court Subdivision other than the  
22 buildings became the common areas of the Condominium.

23           7.     Pursuant to the Declaration, owners of each Condominium unit in each building  
24 became the owners of: (1) their respective unit; and (2) an undivided fractional ownership of the  
25

26           <sup>1</sup> The defined term "Declaration" includes any amendments to the Declaration.

1 general common elements of the condominium and of those limited common elements  
2 appurtenant to the specific unit, as set forth in the Declaration and any subsequent amendments  
3 thereto.

4 8. WFS and Washington Mutual Bank consented to the Declaration and the  
5 formation of the Condominium and such consent was recorded in the Jackson County real  
6 property records, Instrument Numbers 2004-018232, 2004-033493 and 2004-033494  
7 (collectively, the "Consent").  
8

9 9. After the Declaration was recorded, several subsequent purchasers and secured  
10 parties acquired interests in Condominium units and those common elements located on Lots 2, 5  
11 and 6 of the prior subdivision.

12 10. The subsequently recorded deeds describe each respective interest in terms of  
13 units in a condominium, not lots in a subdivision.  
14

15 11. On April 13, 2010, Defendant Northwest Trustee Services, Inc., as trustee of the  
16 JP Trust Deeds, recorded notices of default and elections to sell Lots 2 and 5 of the Victoria  
17 Court Subdivision, initiating the non-judicial foreclosure of the JP Trust Deeds.

18 12. Because the property descriptions provided in the JP Trust Deeds describe the  
19 scope of the encumbrances in terms of lots, instead of individual units with associated interests in  
20 the common elements, the other parties with an interest in those common elements located on  
21 former Lots 2 and 5 will be foreclosed and the Condominium will effectively be terminated if JP  
22 Morgan concludes its pending non-judicial foreclosures.  
23

24 Conclusions of law:

25 1. This court has subject matter jurisdiction over this matter pursuant to 28 U.S.C.  
26 §§ 157, 1334, United States District Court Local Rule 2100.0, and FRBP 7001. Venue is proper

1 pursuant to 28 U.S.C. § 1409.

2 2. Under the recently announced decision in *Stern v. Marshall* 564 U.S. \_\_\_, 131  
3 S.Ct. 2594, 2011 WL 2472792, 180 L.Ed.2d 475 (2011), this bankruptcy court may not enter a  
4 final judgment in this matter because it is a matter of state law that has not been resolved in the  
5 process of ruling on federal bankruptcy issues.

6 3. Declaratory relief is appropriate because the parties are in an actual controversy  
7 regarding the effect of the Consent on the WFS and JP Trust Deeds.

8 4. Where a condominium agreement is recorded and a pre-existing mortgage exists,  
9 the effect of the consent by a pre-existing mortgage holder is to subordinate its interest to the  
10 condominium agreement, thereby changing the pre-existing mortgage holder's property interest  
11 to reflect the condominium form of ownership. Therefore, the effect of the Consent is to  
12 subordinate the WFS and JP Trust Deeds to the Declaration. Such subordination shall change  
13 the property interests secured by the WFS and JP Trust Deeds to reflect the condominium form  
14 of ownership, as described in the Declaration and as more specifically described in the proposed  
15 form of judgment.

16  
17  
18 Scheduling Order:

19 These findings and recommendations will be referred to a district judge. Objections, if  
20 any, are due 17 days after entry of these Findings of Fact and Conclusions of Law. If no  
21 objections are filed, then the findings and recommendations will go under advisement on that  
22 date. If objections are filed, then responses are due 14 days after being served with a copy of the  
23 objections. When the responses are due or filed, whichever date is earlier, the finding and  
24 recommendations will go under advisement.  
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26 ###